IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 574 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MR DEVASHREE

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 574 of 1989

MR CG GOVINDAN for MR AK CLERK for Petitioner No. 1

MR LB DABHI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

1. The unfortunate circumstances have led the

petitioner to approach this Court under Article 226 of the Constitution of India praying that his result of the examination held in the month of October 1987 for the I.T.I. Apprenticeship be declared and the order dated 13th January, 1989 cancelling the result of the petitioner be quashed and set aside.

2. The petitioner, after passing SSC/HSC examination, joined the Industrial Training Institute at Ahmedabad and took training under the Apprenticeship Training Scheme between 8/10/1986 and 7/10/1987. This training was done at Vanakbori Electricity Board and contract was also executed by the petitioner and respondent no. 4 on 19th December, 1986. After completion of one year's training with respondent no. 4 - Board, respondent no. 4 issued a certificate on 6th October, 1987, copy whereof is annexed at Annexure-A. On receipt of certificate he was required to appear in the examination which was scheduled to be held in October 1987. He was permitted to appear in this examination, but later on his result of the examination was not declared and kept reserved. The petitioner made inquiry why his result was not declared. In response he was addressed a communication dated 24th May, 1988, whereby he was intimated that there was a shortfall of one day as the minimum attendance required was 37 days, whereas his has attendance was 36 days. The petitioner was thereafter, served with the show cause notice dated July 13-15, 1988, whereby he was called upon to show cause why his result should not be cancelled. In response to the said show cause notice, he gave reply dated 20th July, 1988. However, the explanation submitted by the petitioner was not accepted by the concerned authority and by letter dated 13th January, 1989 he was intimated that his result was cancelled. It is this order of the respondent, which is sought to be challenged by the petitioner in this petition.

3. The petition has been opposed by the respondents by filing affidavit-in-reply. It is averred that the petitioner was otherwise required to attend 200 days of practical training and 40 days of instruction classes in normal case. However, due to the disturbed condition of the city, the requisite number of days was reduced to 37 from 40. According to the respondents, even the reduced minimum number of days were not attended by the petitioner and his attendance was falling short by one day and, therefore, no relief could have been given to him.

4. Having heard Mr. Govindan, learned advocate

appearing for Mr. A.K. Clerk for the petitioner and Mr. Dabhi, learned AGP for the respondents and having gone through the record of the petition, it appears that the examination was held in the month of October 1987 and the petitioner was intimated regarding withholding of his result by letter dated 24th May, 1988. He was thereafter served with a show cause notice dated July 13-15, 1988 and ultimately order at Annexure-F cancelling the result was passed on January 13, 1989. It is almost 15 years that the result has been cancelled. Considering the nature of the petition and also the urgency, the Division Bench of this Court by order dated March 15, 1991 had fixed the matter for final hearing on March 20, 1991. Thus, adequate opportunity for early hearing was already afforded to the petitioner, but it seems that that has not been seized and the petition was allowed to linger on for 13 more years. No useful purpose now will be served in granting the relief as prayed for by the petitioner.

4.1. Not only that but even on merits the petitioner does not have good case. It is an admitted fact that there was a shortfall of one day with regard to the requisite attendance as contemplated under the provisions of the Apprentices Act, 1961 and the Apprenticeship Rules, 1991. The respondents, therefore, served the show cause notice calling upon the petitioner to give explanation why his result was not required to be cancelled. It appears that the petitioner at that point of time could have acted in accordance with sub-clause (vii) of Clause (7) of Schedule - V of the Apprenticeship Rules, 1991, which deals with the obligations of employer in accordance with rule 6 of the Apprenticeship Rules, 1991. The said sub-clause reads as under :-

> "(7) (i) to (vi) xxx xxx xxx
> (vii) If the apprentice is not able to put in the minimum period of attendance specified in sub-clause (v) during the period of training for circumstances beyond his control and the employer is satisfied with the grounds for shortfall in attendance and certifies that the apprentice has otherwise completed the full apprenticeship course, he shall be considered as having completed the full period of training and shall be eligible to take the test conduct by the National Council,"

The petitioner at that point of time could have approached the employer, viz. respondent no. 4 and obtained necessary certificate indicating that it was only because of the circumstances beyond his control he

could not complete the requisite attendance of 37 days and there was shortfall of one day. That has not been done as the record of the petition shows. If that is not so, there is no power with the respondents to condone the shortfall and to hold the petitioner entitled to appear in the examination and to have the result. In such circumstances, it appears that the respondents have no other scope but to cancel the result of the petitioner.

5. According to the petitioner, he had completed the requisite attendance, namely of 37 days and there was no shortfall. However, this appears to be a disputed question of fact and it cannot be decided in this petition under Article 226 of the Constitution of India and that too 17 years after the event. Thus, this petition has no merit and it deserves to be dismissed. Accordingly, it is dismissed. Rule discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.